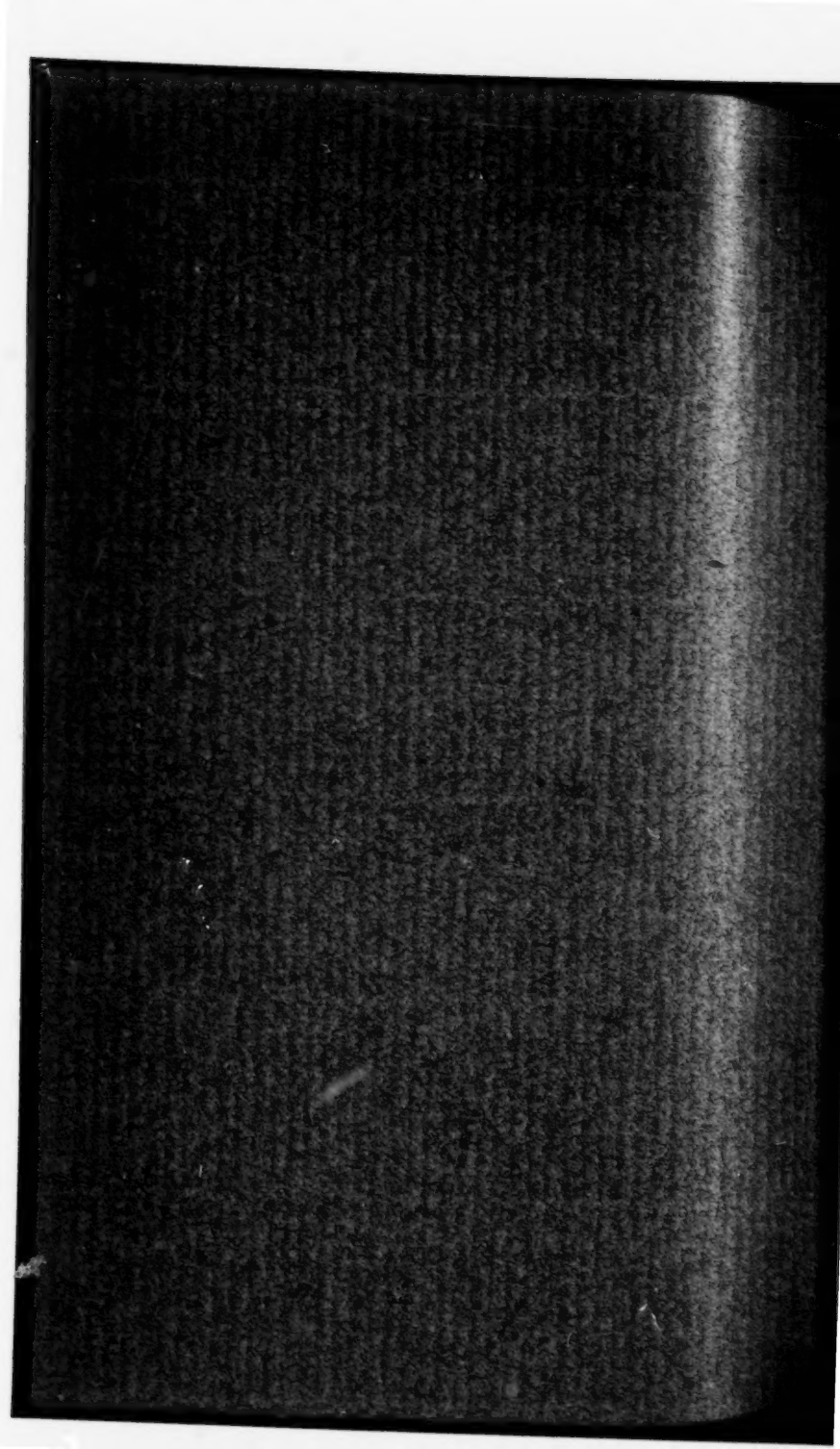
SUPREME COURT
OF THE
UNITED STATES



In the Supreme Court of the United States.

Fidelity & Deposit Company of Maryland, Plaintiff in Error,

vs.

L. Bucki & Son Lumber Company, Defendant in Error.

No. 513.

Comes now the defendant in error, L. Bucki & Son Lumber Company, by H. Bisbee and George C. Bedell, its attorneys, and moves the Court for leave to file assignments of error upon the ruling and judgment of the United States Circuit Court of Appeals for the Fifth Circuit rendered upon the transcript of the record and proceedings in the Circuit Court of the United States for the Southern District of Florida in a certain cause therein lately pending wherein this moveant was plaintiff and the Fidelity & Deposit Company of Maryland was defendant, which said transcript was brought to the said Circuit Court of Appeals by writ of error prosecuted by this moveant, on the grounds following, to-wit:

First. This Honorable Court has recently,

to-wit: on the 20th day of January, 1902, on a petition of said Fidelity & Deposit Company of Maryland for certiorari, complaining of alleged error in a single ruling of the said Circuit Court of Appeals on an assignment of error by this moveant, granted a writ of certiorari to said Circuit Court of Appeals to bring before this Honorable Court the above mentioned transcript, and a transcript of the record of the proceedings of said Circuit Court of Appeals thereon, and also a transcript of the record brought to said Circuit Court of Appeals by a writ of error prosecuted by said Fidelity & Deposit Company of Maryland, with a transcript of the record of proceedings in said Circuit Court of Appeals thereon. Both of said writs of error were from the same judgment of the Circuit Court of the United States for the Southern District of Florida, and the interests of justice require that this Honorable Court should, in the review of the decision and judgment of the said Circuit Court of Appeals, have before it and consider the errors assigned by both parties upon the rulings and judgment of the trial court. The rulings complained of by both parties in the Circuit Court of Appeals, as aforesaid, were largely contained in certain instructions to the jury upon the elements of damages recoverable upon attachment bonds conditioned to pay "all damages the defendant may sustain in consequence of the plaintiff's improperly suing out certain attachments,"

and are consequently of great public interest and importance.

This motion is urged for the purpose of bringing before this Honorable Court said rulings complained of by this moveant, should this Honorable Court consider that as the record upon its writ of error by the said Circuit Court of Appeals has already been brought before this Court upon the writ of certiorari heretofore granted, its petition for certiorari should not be granted.

BISBEE & BEDELL,

Attorneys for L. Bucki & Son Lumber Company.

Notice.

The attorneys for Fidelity & Deposit Company of Maryland, defendant in said cause, are hereby notified that the foregoing motion will be made on Monday, the 3d day of February, 1902, or as soon thereafter as the said motion can be submitted.

BISBEE & BEDELL,

Attorneys for L. Bucki & Son Lumber Company.

Service of the foregoing notice and motion accepted.

R. H. LIGGETT,

Attorney for Fidelity & Deposit Company of Maryland.

Brief in Support of Motion for Leave to File Assignments of Error.

This is a motion by plaintiff in the trial court for leave to file assignments of error in a cause brought here by defendant in the trial court by certiorari.

In *Hubbard vs. Tod*, 171 U. S., 474, 494, this Court, speaking through the Chief Justice, said: "And as respondents did not apply for certiorari, we shall confine our consideration of the case to the examination of errors assigned by petitioner."

The certiorari granted in the case at bar (on January 20, 1902) was upon a petition alleging error in a ruling of the Circuit Court of Appeals upon an assignment laid by this moveant upon its writ of error. This moveant, with a view to compliance with the requirement of the Court in *Hubbard vs. Tod*, *supra*, herewith submits its petition for certiorari, but inasmuch as in the case at bar, there is already before the Court, upon certiorari granted at the instance of the other party, the very record sought by said petition, the proceeding by certiorari would seem in this case to be a cumbrous means of getting before the Court the questions raised by this moveant in the Circuit Court of Appeals, and this motion is urged as

a substitute therefor, should the Court, upon consideration, deem said petition ill advised.

The Court, by its writ of certiorari, has called not only for the record upon which the supposed error of the Court of Appeals happened, but also for the record on the writ prosecuted by the other party, defendant in the trial court, thereby indicating a purpose to review the supposed errors assigned by said defendant in the Court of Appeals; and this moveant respectfully submits that it is but fair and proper that if a question raised below by one of its assignments, and a ruling upon all of its opponent's assignments are to be reviewed, this Court should also review the other questions raised by this moveant in the Court of Appeals.

Those questions are of importance, involving the measure of damages upon an attachment bond conditioned "to pay all costs and damages which the defendant may sustain in consequence of the plaintiff's improperly suing out said attachment," the learned trial court having held the plaintiff to a strict measure of damages and limiting its recovery to damages actually sustained by the detention of its property, and declining to permit the jury to consider damages by the breaking up and destruction of its business, as not in contemplation of the obligors at the time of the making of the bond. The nature of those questions is more fully disclosed by the brief

in support of this moveant's petition for certiorari herewith submitted, to which reference is prayed.

H. BISBEE,
GEORGE C. BEDELL,
Attorneys for Moveant.